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No. 98-2042

In the Supreme Court of the United States

JAMES BENJAMIN, ET AL., PETITIONERS

v.

BERNARD KERIK, COMMISSIONER, NEW YORK CITY DEPARTMENT OF CORRECTION, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the immediate termination provision of the Prison Litigation Reform Act of 1995, 18 U.S.C. 3626(b) (Supp. III 1997), violates separation-of-powers principles, deprives petitioners of vested property rights without due process of law, or denies petitioners the equal protection of the laws.

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OPINIONS BELOW

The en banc opinion of the court of appeals (Pet. App. 1a-98a) is reported at 172 F.3d 144. The panel opinion of the court of appeals (Pet. App. 101a-139a) is reported at 124 F.3d 162. The opinion of the district court (Pet. App. 140a-184a) is reported at 935 F. Supp. 332.

JURISDICTION

The judgment of the court of appeals was entered on March 23, 1999. The petition for a writ of certiorari was filed on June 21, 1999. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. In the mid-1970s, pre-trial detainees in the New York City jails brought seven class actions challenging the constitutionality of their conditions of confinement. Pet. App. 7a. The seven class actions were resolved through consent decrees entered in 1978 and 1979. *Id.* at 6a-7a.

In 1996, the Prison Litigation Reform Act of 1995 (PLRA), Pub. L. No. 104-134, Tit. VIII, §§ 801-810, 110 Stat. 1321-66 to 1321-77, became effective. Under the PLRA, prospective relief in prison conditions cases "shall extend no further than necessary to correct the violation of the Federal right of a particular plaintiff or plaintiffs." 18 U.S.C. 3626(a)(1)(A) (Supp. III 1997). The PLRA provides for the immediate termination of relief that does not conform to that standard. It specifies that "[i]n any civil action with respect to prison conditions, a defendant or intervener shall be entitled to the immediate termination of any prospective relief if the relief was approved or granted in the absence of a finding by the court that the relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right." 18 U.S.C. 3626(b)(2) (Supp. III 1997). Relief may nonetheless be continued if the court makes written findings based on the record that "prospective relief remains necessary to [remedy] a current and ongoing violation of the Federal right, extends no further than necessary to correct the violation of the Federal right, and that the prospective relief is narrowly drawn and the least intrusive means to correct the violation." Department of Justice Appropriations Act, 1998, Pub. L. No. 105-119, Tit. I, § 123(a)(2), 111 Stat. 2470,

amending 18 U.S.C. 3626(b)(3) (Supp. II 1996). A party may seek termination of prospective relief under Section 3626(b) even if the relief "was originally granted or approved before * * * the date of the [PLRA's] enactment." PLRA, § 802(b)(1), 110 Stat. 1321-70 (18 U.S.C. 3626 note (Supp. III 1997)).*

After the PLRA became effective, the New York City Department of Corrections and its Commissioner moved to terminate the consent decrees, on the ground that they had been entered without the findings required by the PLRA. Pet. App. 10a. Petitioners opposed the motion to terminate, contending that the PLRA's termination provisions violate Article III and deny due process and equal protection of the laws. *Ibid.* Petitioners also requested an opportunity to show that the relief in the decrees remains necessary to remedy a constitutional violation. *Ibid.* The United States intervened to defend the constitutionality of the PLRA. *Id.* at 11a. The district court rejected petitioners' constitutional arguments and vacated the consent decrees. *Id.* 140a-184a. The court also denied petitioners' request for an opportunity to show that the relief in the decrees remains necessary to remedy a constitutional violation. *Id.* at 12a.

2. A panel of the court of appeals affirmed in part and reversed in part. Pet. App. 101a-139a. The panel interpreted the PLRA to prevent federal enforcement

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* Under 18 U.S.C. 3626(b)(1) (Supp. III 1997), all decrees, including those entered with the necessary findings, are also subject to periodic review to determine whether they remain necessary to remedy a constitutional violation. Section 3626(b)(1) provides for such review two years after the entry of relief, one year after a denial of a motion to terminate, and, in the case of pre-PLRA decrees, two years after the date of enactment. In April 1998, all pre-PLRA decrees became subject to periodic review.

of consent decrees that do not conform to its standards, but not to require termination of the decrees themselves. The panel therefore concluded that, "while the defendants may be entitled to immediate termination of prospective relief from the *federal* courts, there is nothing to prevent the plaintiffs from seeking the enforcement of the Consent Decrees in *state* courts." *Id.* at 103a. The court believed that its interpretation of the PLRA was necessary to avoid serious constitutional questions. *Id.* at 116a, 121a-122a, 125a.

3. On rehearing en banc, the court of appeals affirmed the district court's decision insofar as it upheld the constitutionality of the immediate termination provision, and reversed the district court's decision insofar as it vacated the consent decrees. Pet. App. 1a-98a. Disagreeing with the panel, the en banc court first held that the PLRA mandates termination of consent decrees that do not conform to the PLRA's standards, not just the termination of federal court enforcement. *Id.* at 21a-23a. The court therefore concluded that, once such relief is terminated, it may not be enforced in state court. *Id.* at 23a-25a. The court held, however, that the district court erred in "vacating" the decrees. The court explained that "[t]he Act states that such decrees are to be 'terminat[ed]'; it does not speak of vacatur or use the term 'vacate.'" *Id.* at 28a.

The court rejected petitioners' contention that Section 3626(b) violates Article III by requiring the reopening of a final judgment. Pet. App. 30a-33a. The court explained that, under *Plaut* v. *Spendthrift Farm, Inc.*, 514 U.S. 211 (1995), and *Pennsylvania* v. *Wheeling & Belmont Bridge Co.*, 59 U.S. (18 How.) 421 (1856), "Congress lacks the authority to alter a finally rendered judgment ordering the payment of money. On the other hand, to the extent that a court's final judgment con-

sists of an injunction, Congress may require alteration or termination of its future effect if the law on which the injunction was predicated has been changed." Pet. App. 33a. The court held that the PLRA is constitutional under those standards. The court reasoned that: "By statute Congress has altered the courts' remedial powers so that, in this class of cases, injunctions may not be issued if they are not constitutionally mandated. Congress may accordingly require the termination of the executory portions of injunctions that exceed the courts' present remedial powers." *Ibid.*

The court next rejected petitioners' due process claim, reasoning that petitioners do not have a constitutionally protected property interest in the continuation of the prospective relief in the decrees. Pet. App. 38a-39a. The court also rejected petitioners' equal protection claim, explaining that Section 3626(b) is rationally related to the legitimate goal "of limiting the grant or continuation of prospective relief in this context to no more than what is found necessary to remedy the violation of a federal right." *Id.* at 41a. The court held, however, that the district court had erred in failing to give petitioners an opportunity to present evidence to show that there is a current and ongoing violation of a federal right. *Id.* at 43a. The court therefore remanded for further proceedings on that issue. *Ibid.*

Judge Jacobs (joined by Chief Judge Winter, and Judges Kearse, Walker, McLaughlin, Cabranes, and Parker) filed a concurring opinion explaining why he believed it was appropriate for the court to address the question whether a terminated decree is enforceable in state court. Pet. App. 45a-46a. Judge Leval (joined by Judge Oakes, and joined in part by Judge Calabresi), concurred in part. He argued that the question whether a terminated decree can be enforced in state

court is not properly before the court and that the en banc court's resolution of that issue is dicta. *Id.* at 47a-54a. Judge Calabresi, the author of the panel decision, concurred in the result. He adhered to his view that the PLRA does not require termination of the decree itself and that the decree can therefore be enforced in state court. *Id.* at 55a-98a.

ARGUMENT

The court of appeals correctly held that the PLRA's immediate termination provision is constitutional. The seven other circuits that have addressed the question have reached the same conclusion. See *Berwanger* v. *Cottey*, 178 F.3d 834 (7th Cir. 1999); *Nichols* v. *Hopper*, 173 F.3d 820 (11th Cir. 1999); *Imprisoned Citizens Union* v. *Ridge*, 169 F.3d 178 (3d Cir. 1999); *Hadix* v. *Johnson*, 133 F.3d 940 (6th Cir.), cert. denied, 118 S. Ct. 2368 (1998); *Inmates of Suffolk County Jail* v. *Rouse*, 129 F.3d 649 (1st Cir. 1997), cert. denied, 118 S. Ct. 2366 (1998); *Dougan* v. *Singletary*, 129 F.3d 1424 (11th Cir. 1997), cert. denied, 118 S. Ct. 2375 (1998); *Gavin* v. *Branstad*, 122 F.3d 1081 (8th Cir. 1997), cert. denied, 118 S. Ct. 2374 (1998); *Plyler* v. *Moore*, 100 F.3d 365 (4th Cir. 1996), cert. denied, 520 U.S. 1277 (1997). This Court has denied petitions for review in five of those cases, and there is no reason for a different outcome here. The petition for a writ of certiorari should therefore be denied.

1. a. Petitioners err in contending (Pet. 17-20) that Section 3626(b) violates the separation-of-powers principles set forth in *Plaut* v. *Spendthrift Farm, Inc.*, 514 U.S. 211 (1995). In *Plaut*, the Court held that Congress may not require federal courts to reopen final judgments dismissing claims for monetary relief. *Id.* at 218-219. *Plaut* did not suggest, however, that Congress is

precluded from providing for the termination of prospective relief to the extent that such relief fails to conform to new legal standards. To the contrary, the Court reaffirmed its earlier decision in *Pennsylvania* v. *Wheeling & Belmont Bridge Co.*, 59 U.S. (18 How.) 421 (1856), which it characterized as upholding Congress's power to "alter[] the prospective effect of injunctions entered by Article III courts." *Plaut*, 514 U.S. at 232. The critical difference is that, while a final judgment on a claim for monetary relief represents "the last word of the judicial department with regard to a particular case or controversy," *id.* at 227, an injunction is always subject to modification or termination in light of a "significant change either in factual conditions or in law," *Rufo* v. *Inmates of Suffolk County Jail*, 502 U.S. 367, 384 (1992). Thus, as the courts of appeals have uniformly concluded, Congress may not require courts to reopen final judgments on claims for monetary relief, but Congress may require the modification of prospective relief in accordance with a change in the applicable law. See, *e.g.*, *Hadix*, 133 F.3d at 942-943; *Dougan*, 129 F.3d at 1426; *Gavin*, 122 F.3d at 1085-1088; *Plyler*, 100 F.3d at 371-372.

As the courts of appeals have further concluded, Section 3626(b) falls on the constitutional side of that line. *E.g.*, *Hadix*, 133 F.3d at 943; *Dougan*, 129 F.3d at 1426-1427; *Gavin*, 122 F.3d at 1085-1088; *Plyler*, 100 F.3d at 372. Section 3626(b) applies only to "prospective relief." 18 U.S.C. 3626(b) (Supp. III 1997). It also requires a court to terminate such relief only when the relief does not conform to Congress's new legal standard for awarding equitable relief in prison conditions cases involving consent decrees. Although courts could previously enter a consent decree that provided for relief greater than that required by federal

law, *Rufo*, 502 U.S. at 389, the PLRA alters judicial remedial authority in consent decree cases by providing that relief entered pursuant to a consent decree may "extend no further than necessary to correct the violation of the Federal right." 18 U.S.C. 3626(a)(1)(A) (Supp. III 1997). Consistent with *Plaut* and *Wheeling & Belmont Bridge*, Congress had authority to provide that existing consent decrees should be modified so that the prospective relief in those decrees conforms to Congress's new remedial standard.

Petitioners contend (Pet. 13) that *Wheeling & Belmont Bridge* is distinguishable, because in that case "Congress had simply altered the substantive legal rights that the injunction enforced—legal rights that, unlike the constitutional rights asserted in the instant cases, were entirely within Congress's power." That suggested distinction is unpersuasive. Although Congress lacks power to modify constitutional rights, Congress had the authority to alter the applicable *remedial* law in cases alleging violation of constitutional rights by limiting the authority of courts to award relief to that which is necessary to remedy a violation of federal law. See *Yakus* v. *United States*, 321 U.S. 414, 441-442 & n.8 (1944) (upholding Congress's authority to restrict the remedial authority of courts and noting numerous instances in which Congress has exercised such authority). Having made that change in remedial law, Congress also had the authority under *Plaut* and *Wheeling & Belmont Bridge*, to provide that previously issued injunctions may remain in effect only if they comply with that new remedial standard. As Judge Selya explained in *Inmates of Suffolk County Jail* v. *Rouse*, "[t]he relevant underlying law in this case * * * relates to the district court's authority to issue and maintain prospective relief absent a violation of a

federal right, and the PLRA has truncated that authority." 129 F.3d at 657. If a consent decree fails to meet the PLRA standards, termination of the decree in response to the PLRA, "therefore, merely effectuates Congress's decision to divest district courts of the ability to construct or perpetuate prospective relief when no violation of a federal right exists." *Ibid.*; see also *Plyler*, 100 F.3d at 372 ("The Inmates fail to understand that the applicable law is not the Eighth Amendment, but rather is the authority of the district court to award relief greater than that required by federal law.").

b. Petitioners also err in contending (Pet. Supp. Br. 2) that the Ninth Circuit's recent en banc decision in *Taylor* v. *United States*, No. 97-16069, 1999 WL 402748 (June 18, 1999), suggests that review should be granted in this case. In *Taylor*, the Ninth Circuit held that the case before it was moot. It therefore did not resolve the question whether the PLRA's termination provision violates Article III. 1999 WL 402748, at *1 ; *id.* at *9 (Tashima, J., concurring in part).

Petitioners seek to rely (Pet. Supp. Br. 3-5) on Judge Rymer's view that the PLRA could not be applied constitutionally to the judgment at issue in that case. But Judge Rymer spoke for only five of the eleven judges on the en banc court on that issue. 1999 WL 402748, at *6-*9. One judge did not reach the issue, *id.* at *9 (Tashima, J., concurring in part), and five judges disagreed with Judge Rymer's constitutional analysis, *id.* at *17-*22 (Wardlaw, J., joined by Thompson, Kleinfeld, Silverman, and Graber, JJ., dissenting).

In any event, Judge Rymer perceived a constitutional difficulty with the PLRA only as applied to cases in which a judgment has been fully executed and is not subject to further supervision. 1999 WL 402748, at *9. Judge Rymer distinguished the circuit decisions up-

holding the PLRA's immediate termination provision on the ground that they all involved consent decrees that were subject to continuing judicial supervision. *Id.* at *8. Since the consent decrees in this case are subject to continuing judicial supervision, Judge Rymer's opinion provides no support for petitioners' constitutional challenge here.

2. Petitioners also contend (Pet. 20-24) that the immediate termination provision deprives them of vested property rights in violation of the Due Process Clause. Prospective orders, however, are always subject to possible modification or termination, and that principle is fully applicable to consent decrees. *Rufo*, 502 U.S. at 378. Thus, as the court of appeals concluded (Pet. App. 38a-39a), petitioners had no vested property interest protected by the Due Process Clause in the prospective relief embodied in the consent decrees. See *Landgraf* v. *USI Film Prods.*, 511 U.S. 244, 273-274 (1994) (plaintiffs do not have a vested right in an injunctive decree); see also *Inmates of Suffolk County Jail*, 129 F.3d at 658; *Dougan*, 129 F.3d at 1426-1427; *Gavin*, 122 F.3d at 1090-1091; *Plyler*, 100 F.3d at 374-375.

3. Petitioners' contention (Pet. 24-27) that Section 3626(b) denies them equal protection of the laws is also without merit. Because Section 3626(b) does not interfere with a fundamental right or employ a suspect classification, it is subject to "rational basis" review. *Heller* v. *Doe*, 509 U.S. 312, 320 (1993). Section 3626(b) easily satisfies that standard. As the court of appeals explained, "[t]he objective of limiting the grant or continuation of prospective relief in this context to no more than what is found necessary to remedy the violation of a federal right is unquestionably a legitimate one." Pet. App. 41a; see also *Inmates of Suffolk County*

Jail, 129 F.3d at 660; *Dougan*, 129 F.3d at 1427; *Gavin*, 122 F.3d at 1090; *Plyler*, 100 F.3d at 374.

Petitioners' reliance (Pet. 24-26) on *Romer* v. *Evans*, 517 U.S. 620, 632-633 (1996), and *City of Cleburne* v. *Cleburne Living Center, Inc.*, 473 U.S. 432, 447-450 (1985), is misplaced. In those cases, the Court held that the legislation at issue did not bear a rational relationship to any legitimate government objective but instead could only be understood as being based on irrational prejudice against the group adversely affected. *Ibid.* Because the PLRA is rationally related to a legitimate government objective and is not based on animus against inmates, *Romer* and *City of Cleburne* are inapposite here.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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